

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
IN AND FOR THE SIXTH APPELLATE DISTRICT

G. MITCHELL KIRK; AND  
CALIFORNIA RIFLE & PISTOL  
ASSOCIATION, INCORPORATED,

PLAINTIFFS AND APPELLANTS,

V.

CITY OF MORGAN HILL; MORGAN  
HILL CHIEF OF POLICE DAVID  
SWING, IN HIS OFFICIAL CAPACITY;  
MORGAN HILL CITY CLERK IRMA  
TORREZ, IN HER OFFICIAL CAPACITY;  
AND DOES 1-10,

DEFENDANTS AND RESPONDENTS.

Case No. H048745

**DECLARATION OF ANNA M. BARVIR IN SUPPORT OF  
APPELLANTS' MOTION FOR RELIEF FROM DEFAULT AND TO  
REINSTATE APPEAL**

Superior Court of California, County of Santa Clara  
Case No. 19CV346360  
Honorable Peter H. Kirwan, Judge

C. D. Michel – SBN 144258  
Anna M. Barvir – SBN 268728  
Tiffany D. Cheuvront – SBN 317144  
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*Counsel for Plaintiffs-Appellants*

## **DECLARATION OF ANNA M. BARVIR**

I, Anna M. Barvir, declare as follows:

1. I am an attorney licensed to practice before all courts in the state of California. The law firm where I am employed, Michel and Associates, P.C., is council of record for Plaintiffs G. Mitchell Kirk and California Rifle & Pistol Association, Incorporated, in the above-entitled matter. I make this declaration in support of Appellants' Motion for Relief from Default and to Reinstate Appeal. I have personal knowledge of the facts set forth herein and if called as a witness, I could and would competently testify hereto.

2. On or about January 22, 2021, I completed the required Appellants' Notice Designating Record on Appeal, electing to use an appendix in lieu of a clerk's transcript as a record of the documents filed in the trial court. I also elected to use a reporter's transcript of all relevant oral proceedings and attached a certified copy of the reporter's transcript at issue. I then directed my paralegal, Ms. Laura Palmerin, to electronically file the Notice.

3. On or about February 1, 2021, I received a Notice of Default from the Santa Clara Superior Court dated January 29, 2021, indicating that Appellants had not designated a record for the clerk's transcript, had not paid the \$100 deposit for the clerk's transcript, and had not designated the oral proceedings for the reporter's transcript.

4. Realizing then that the trial court had either not received or not processed our Notice Designating Record on Appeal, I directed Ms. Palmerin to reach out to the trial court to discuss how to cure the perceived default since Appellants had, in fact, already filed the required Notice.

5. On or about February 3, 2021, I directed Ms. Palmerin to send a letter, as well as copies of Appellants' Notice Designating Record on appeal

and the electronic filing receipt, via overnight mail to the trial court. I directed her to send the letter some 11 days before the deadline to cure in hopes that, if Appellants' Notice Designating Record on Appeal was still defective, there would be time for the trial court to notify me so that I could correct any outstanding deficiencies.

6. After sending the letter via overnight mail, I kept in regular email contact with Ms. Palmerin for updates on whether the trial court had accepted our filing or had otherwise contacted us regarding the perceived default. Though she had repeatedly reached out the trial court via email and telephone, Ms. Palmerin informed me that there had been no response.

7. On February 16, 2021, I finally received the conformed copy of Appellants' Notice Designating Record on Appeal with the file-stamp date of January 22, 2021. Having received this document and no other communication from the trial court, I believed that the trial court had finally received and processed our timely filed designation of the record and no further action was necessary.

8. So, when I received this Court's February 24, 2021 order dismissing the appeal for Appellants' failure to designate the record for or pay a \$100 deposit toward the clerk's transcript, I was quite surprised. I immediately directed Ms. Palmerin to contact the Court of Appeal and the trial court and to pull the civil case docket to figure out what could have been missing. Ms. Palmerin later sent me copies of the trial court's February 18 and February 22 notices regarding the failure to cure the perceived defect regarding the designation of the clerk's transcript and the \$100 deposit.

9. Because I had elected to proceed with an appendix in lieu of the clerk's transcript and based on my 10 years of experience litigating appeals in California, I reasonably believed that Appellants were not required to submit

\$100 deposit for a clerk's transcript. Indeed, I do not remember a single instance of an appeal where the deposit was required when I elected to proceed with an appendix.

10. What's more, I had directed Ms. Palmerin to call and email the trial court many times before the deadline to cure default in order to clarify whether Appellants' designation of the record was still defective and, if so, what needed to be done to cure it. Appellants are willing and able to pay the \$100 clerk's transcript deposit if it is required, and they would have done so had they been notified of continued deficiency.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on February 24, 2021 at Stanton, California.



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Anna M. Barvir  
Declarant

## PROOF OF SERVICE

Case Name: *Kirk, et al. v. City of Morgan Hill, et al.*  
Court of Appeal Case No.: H048745  
Superior Court Case No.: 19CV346360

I, Laura Palmerin, am employed in the City of Long Beach, Los Angeles County, California. I am over the age eighteen (18) years and am not a party to the within action. My business address is 180 East Ocean Boulevard, Long Beach, California 90802.

On February 24, 2021, I served a copy of the foregoing document described as: **DECLARATION OF ANNA M. BARVIR IN SUPPORT OF APPELLANTS' MOTION FOR RELIEF FROM DEFAULT AND TO REINSTATE APPEAL**, on the following parties, as follows:

Anthony P. Schoenberg  
[tschoenberg@fbm.com](mailto:tschoenberg@fbm.com)  
James Allison  
[jallison@fbm.com](mailto:jallison@fbm.com)  
Farella Braun + Martel, LLP  
235 Montgomery Street, 17th Floor  
San Francisco, CA 94104

Hannah Shearer  
[hshearer@giffords.org](mailto:hshearer@giffords.org)  
Giffords Law Center to Prevent Gun Violence  
262 Bush Street #555  
San Francisco, CA 94104

*Attorneys for Defendants and Respondents City of Morgan Hill, et al.*

The parties were served as follows: I served a true and correct copy by electronic transmission through TrueFiling. Said transmission was reported and completed without error.

Superior Court of California  
County of Santa Clara  
191 N. First Street  
San Jose, CA 95113


The party was served as follows: by mail. I am “readily familiar” with the firm’s practice of collection and processing correspondence for mailing. Under the practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Long Beach, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date is more than one day after date of deposit for mailing an affidavit.

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on February 24, 2021, at Long Beach, California.

A handwritten signature in cursive script, appearing to read "Laura Palmerin", written in black ink.

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Laura Palmerin  
Declarant